IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 347 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHRI BALBIRSINH LAYAKSINH TOMAR - Applicant(s)
Versus
THE STATAE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR HR PRAJAPATI for Applicant(s) : 1,
PUBLIC PROSECUTOR for Respondent(s) : 1,
RULE SERVED BY DS for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 14/08/2007

ORAL JUDGMENT

By way of this petition under Article 226 of the Constitution of India r/w section 482 of Criminal Procedure Code, the petitioner, - original accused No.2 has prayed for an appropriate order to quash the set

aside the FIR qua the petitioner registered as Prohibition C.R. No.5402 of 2006 dtd 31-12-2006 for the offences punishable u/s 66(b), 65(a)(e) and 81 of the Bombay Prohibition Act with Shaherkotada Police Station.

2. An FIR is filed by the respondent No.2 with Shaherkotada Police Station against the petitioner and one another on 31-12-06 for the offence u/s 66(b), 65(a)(e) and 81 of the Bombay Prohibition Act being Prohibition C.R. No.5402 of 2006 alleging inter alia that the respondent No.2, - original complainant was on duty and was on petrolling for tackling with the illegal activities of liquor and gambling and while he was on duty on 31-12-2006, a prior intimation was received by one Police Constable that the petitioner is keeping the liquor and is selling by keeping man at Everest Cross Road and there was a raid by keeping two panchas present and the information was found to be true and there was a raid and at that time, the petitioner started shouting that the police has come and he has run away and the police tried to nap them but he has run away and one Karan Pratapsinh Rathod, original accused No.1 was arrested on the spot and 38 litres of liquor was found along with other materials and therefore, the impugned complaint has been filed. Being aggrieved by the same, the petitioner, original accused No.2 has preferred the present application u/s 482 of Criminal Procedure Code r/w Article 226 of the Constitution of India to quash the aforesaid complaint.

3. It is the contention of the petitioner that in fact the respondent No.2 is running stands i.e. places, where liquor is being sold and the impugned complaint has been filed with a view to harass the petitioner as the brother

of the petitioner has filed one complaint before the DCP against the police officers. It is submitted that there is no material and/or evidence against the petitioner as he was not present at the time of alleged incident and the respondent No.2 has with ulterior motive given the name of the petitioner as accused. It is submitted that the co-accused has given the statement that the petitioner is falsely implicated in the case and therefore, it is requested to quash the FIR.

4. On the other hand, Shri Mengdey, ld. APP while opposing the present application has submitted that on bare reading of the FIR and the averments and allegations in the complaint, prima facie case is made out against the petitioner for further investigation and therefore, the FIR is not required to be quashed and set aside. It is submitted that the allegations of mala fides are not required to be considered at this stage and it is the statutory right of the Investigating Officer to further investigate the case and therefore, the Investigating Officer is not required to be restrained from further investigating the case at the threshold. It is submitted that at the time of raid, the petitioner was very much present and on seeing the police, he started shouting that the police has come and thereafter, he has been successful in running away and looking to the said allegation, it cannot be said that there is no case at all against the petitioner which is not required to be further investigated. Therefore, it is requested to dismiss the present application.

5. Heard the learned advocates appearing on behalf of the parties.

6. It is required to be noted that considering the evidence and allegation in the complaint, it is the case of the original complainant that at the time of raid, the petitioner was very much present on the spot. However, on seeing the police and on raid, the petitioner started shouting that the police has come and thereafter, he has run away and in spite of the best efforts, the petitioner could not be caught and from the original accused No.1 who was caught raid handed on the spot, illegal liquor has been found. It is the allegation against the petitioner that the petitioner is the master mind who is selling the liquor illegally through his hired persons. Now looking to the averments and allegations in the complaint, it cannot be said that no case is made out against the petitioner for further investigation and/or the complaint is required to be dismissed at the threshold without any further investigation. Allegations and averments in the FIR/complaint do constitute the cognizable offence under the IPC and Bombay Prohibition Act which requires further investigation. Considering the decision of the Hon'ble Supreme Court in the case of **State of Orissa and another V. Saroj Kumar Sahoo reported in 2005(13) SCC 540** and in the case of **State of Karnataka and Anr. V. Pastor P. Raju reported in AIR 2006 SC 2825**, no case is made out to quash the FIR at the threshold and to stall the investigation. If on further investigation, it is found that no case is made out against the petitioner, in that case appropriate report will be submitted by the police and if the charge sheet is filed and if the petitioner is not satisfied, the petitioner can certainly avail the further remedy by making appropriate application for discharge before the concerned Court and the same can be dealt with in accordance with law and on its own merits considering the

evidence collected during the investigation. Allegations of mala fides are also not required to be considered at this stage considering the averments and allegations in the complaint/FIR.

7. For the reasons stated above, the petition fails and is accordingly dismissed. Rule discharged. Ad interim relief granted earlier stands vacated forthwith.

(M.R. Shah, J.)

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